

ORDER NO. 4451

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Robert G. Taub, Chairman;
Tony Hammond, Vice Chairman;
Mark Acton; and
Nanci E. Langley

Annual Compliance Report, 2017

Docket No. ACR2017

DETERMINATION TO UNSEAL THE POSTAL SERVICE'S RESPONSE TO
CHAIRMAN'S INFORMATION REQUEST NO. 15

(Issued March 28, 2018)

I. INTRODUCTION

Chairman's Information Request No. 15 requested that the Postal Service publicly file revenue data by country group and shape for the Inbound Letter Post product, as defined in section 1130 of the Mail Classification Schedule (MCS).¹ On February 14, 2018, the Postal Service filed its response to CHIR No. 15 under seal.² On February 16, 2018, the Commission issued a preliminary determination to unseal

¹ Chairman's Information Request No. 15, February 7, 2018, at 2 (CHIR No. 15). Information requests are the process by which the Commission requests additional information, data, or documents from the Postal Service. 39 C.F.R. § 3007.3. The MCS contains substantial information about Postal Service products, including whether the product is classified as market dominant or competitive and descriptions of each product with applicable rates. 39 C.F.R. § 3020.4(b). The MCS is available at <https://www.prc.gov/mail-classification-schedule>. The Commission discusses the distinction between market dominant and competitive products in section II of this Order, *infra*.

the Postal Service's Response to CHIR No. 15.³ For the reasons below, the Commission affirms its preliminary determination and directs the Postal Service to re-file its Response to CHIR No. 15 in a public library reference.

II. BACKGROUND

A. The Universal Postal Union

The Universal Postal Union (UPU) is a United Nations specialized agency comprising 192 member countries, including the United States.⁴ Member countries negotiate international agreements governing the exchange of international mail, including applicable rates for the delivery of international mail. The UPU identifies three types of international mail: Letter Post, Parcel Post, and Express Mail Service (EMS).⁵

² Response of the United States Postal Service to Question 1 of Chairman's Information Request No. 15, February 14, 2018 (Response to CHIR No. 15). See United States Postal Service Notice of Filing Nonpublic Folder USPS–FY17–NP40 and Application for Nonpublic Treatment, February 14, 2018 (Notice of Filing USPS–FY17–NP40). The Postal Service filed an application for non-public treatment as an attachment to its Notice of Filing USPS–FY17–NP40. *Id.* Attachment (Application for Non-Public Treatment).

³ Notice of a Preliminary Determination to Unseal the Postal Service's Response to Chairman's Information Request No. 15, February 16, 2018 (Order No. 4409).

⁴ The full list of UPU member countries is available at <http://www.upu.int/en/the-upu/member-countries.html>.

⁵ EMS mail is an express service for documents and merchandise, which member countries have the option of providing. MCS Section 2515.6.1. EMS prices are set through bilateral or multilateral negotiations. *Id.* Sections 2515.6.4., 2515.6.6.

As discussed in section II.C, *infra*, the data at issue in this proceeding involves a subset of UPU Letter Post mail.⁶ UPU Letter Post mailpieces consist of letters, postcards, printed papers, and small packets weighing up to 2 kilograms.⁷ The UPU divides UPU Letter Post mail into three shapes: letters and cards (format P); large letters or “flats” (format G); and bulky letters and small packets (format E). In January 2018, the UPU Convention began differentiating UPU Letter Post mail by content in addition to shape.⁸ The UPU Convention limits the contents of cards, letters, flats, and bulky letters to documents. UPU Convention, Article 17.2. Small packets are UPU Letter Post mailpieces containing goods. *Id.* Article 17.3.

Foreign postal operators compensate the Postal Service for the delivery of inbound UPU Letter Post mail inside the United States.⁹ The term “inbound” refers to mail received by a destination country for delivery in that country from the foreign postal operator in the country in which the mail originated. The term “outbound” refers to mail

⁶ For the data at issue, the Commission uses the term “Inbound Letter Post,” which refers to the Inbound Letter Post product as defined in section 1130 of the MCS. Inbound Letter Post consists of a subset of UPU Letter Post. For example, Inbound Letter Post consists only of inbound mail, or mail sent from a foreign country and entering the United States for delivery. Inbound Letter Post also has more limited products and services than UPU Letter Post mail. The Commission uses the term “UPU Letter Post mail” to refer to letter post mail as defined by the Universal Postal Convention (UPU Convention), Article 17 (adopted by 2016 UPU Congress) available at http://www.upu.int/uploads/tx_sbdownloader/actsLastCongressActsEn.pdf. UPU Letter Post mail includes inbound and outbound mail, single-piece and bulk mail, and priority and non-priority international letter mail. Accordingly, the term “UPU Letter Post mail” refers to several market dominant and competitive products. The term “Inbound Letter Post” refers to a specific market dominant product. The distinction between market dominant and competitive products is discussed in more detail in section II.B, *infra*.

⁷ UPU Convention, Article 17. UPU Letter Post mail also consists of literature for the blind weighing up to 7 kilograms and M-bags weighing up to 30 kilograms. *Id.* M-bags are special bags containing newspapers, periodicals, books, and similar matter mailed to a single address. *Id.*

⁸ See International Mailing Services: Mailing Services Product and Price Change, 82 Fed. Reg. 49160, 49161 (proposed Oct. 24, 2017); Docket No. R2018-1, Notice of Market Dominant Price Adjustment, October 6, 2017, at 10.

⁹ For purposes of this Order, the Commission uses the term “foreign postal operator” to refer to any governmental or non-governmental entity officially designated by a UPU member country to operate postal services and to fulfill the member country’s UPU obligations within its territory. See Ninth Additional Protocol to the Constitution of the Universal Postal Union, Article II 1.7 (1964) available at http://www.upu.int/uploads/tx_sbdownloader/actsLastCongressActsEn.pdf.

originated in a given country and destined for delivery by a foreign postal operator in another country. The prices foreign postal operators pay each other for the delivery of UPU Letter Post mail are called terminal dues. Foreign postal operators are responsible for the processing and transportation of outbound mail to the destination country, and set the prices for outbound UPU Letter Post mail in their countries. For example, when a mailer in the United Kingdom (U.K.) sends UPU Letter Post mail to the United States, that mailer pays the outbound postage rates determined by Royal Mail, the foreign postal operator in the U.K. Royal Mail then processes and transports the UPU Letter Post mailpieces to the United States. At that point, the Postal Service processes and delivers the UPU Letter Post mail to its destination in the United States, receiving terminal dues as compensation from Royal Mail.

B. Classification of Inbound International Mail

In 2006, the Postal Accountability and Enhancement Act (PAEA)¹⁰ was enacted. The PAEA separated postal products and services¹¹ into two distinct categories, market dominant products and competitive products.¹² Pursuant to 39 U.S.C. § 3642(b), market dominant products are those products over which “the Postal Service exercises sufficient market power that it can effectively set the price of such product[s] substantially above costs, raise prices significantly, decrease quality, or decrease

¹⁰ Pub. L. 109-435, 120 Stat. 3198 (2006).

¹¹ 39 U.S.C. § 102(5) defines “postal service” as “the delivery of letters, printed matter, or mailable packages, including the acceptance, collection, sorting, transportation, or other functions ancillary thereto[.]” 39 U.S.C. § 102(6) defines a postal “product” as “a postal service with a distinct cost or market characteristic for which a rate or rates are, or may reasonably be, applied[.]”

¹² 39 U.S.C. §§ 3621, 3631, 3642. The PAEA exempted experimental products from the requirement that they be classified as market dominant or competitive products. 39 U.S.C. § 3641(a)(2).

output, without risk of losing a significant level of business to other firms offering similar products.”¹³ Competitive products “consist of all other products.”¹⁴

Sections 3621 and 3631 listed the products preliminarily classified as market dominant and competitive, respectively. The PAEA preliminarily classified single-piece international mail as market dominant and bulk international mail as competitive. 39 U.S.C. §§ 3621(a)(10) and 3631(a)(4). When the Commission requested comments related to the classification of inbound international mail in its initial rulemaking pursuant to the requirements of PAEA, the Postal Service argued that the Commission should not classify inbound international mail as market dominant or competitive.¹⁵

The Commission found the Postal Service’s arguments for exceptional treatment of inbound international mail as neither market dominant nor competitive unpersuasive and inconsistent with section 3642.¹⁶ The Commission concluded, “[h]ad Congress intended to exempt inbound international mail from the requirement that all products be categorized as either market dominant or competitive, it would have done so explicitly, as it did by specifically exempting experimental products from the requirements of section 3642.” Order No. 43 at 78 (footnote omitted). The Commission found that the PAEA unambiguously requires the Commission to classify inbound international mail as either market dominant or competitive. *Id.* The Commission then classified the various

¹³ 39 U.S.C. § 3642(b)(1). Examples of market dominant products include products in the First-Class Mail, USPS Marketing Mail, and Periodicals classes.

¹⁴ *Id.* Examples of competitive products include Priority Mail, Priority Mail Express, and First-Class Package Service.

¹⁵ Docket No. RM2007-1, Initial Comments of the United States Postal Service in Response to Order No. 26, September 24, 2007, at 13-22. The Postal Service advanced two principal arguments in support of its position. First, it argued that inbound products and services are not offered or priced by the Postal Service in the same manner as outbound products and services because prices for inbound mail are set by the UPU and beyond the Postal Service’s control. *Id.* at 13-15. Second, it asserted that the PAEA “establishes a separate scheme for transparency and oversight of inbound international mail” which warranted not classifying inbound international mail as either market dominant or competitive. *Id.* at 16.

¹⁶ Docket No. RM2007-1, Order Establishing Ratemaking Regulations for Market Dominant and Competitive Products, October 29, 2007, at 78 (Order No. 43).

inbound international mail products as either market dominant or competitive.¹⁷ Consistent with section 3621(a)(10), the Commission classified all inbound UPU Letter Post mail as market dominant and included such mail in the Inbound Letter Post product. *Id.* at 85.

After its initial categorization of international mail products as either market dominant or competitive, the Commission has since approved the transfer or partial transfer of some international mail products from the market dominant product list to the competitive products list.¹⁸ In the case of Inbound Letter Post, the product has remained on the market dominant product list, and no party has requested a transfer or a partial transfer of the product from the market dominant to the competitive product list.

C. Data at Issue

CHIR No. 15 requested that the Postal Service publicly file revenue data by UPU country group and shape for the Inbound Letter Post product. CHIR No. 15 at 2. The requested data is substantially more aggregated than the operator-specific Inbound Letter Post revenue data typically provided to the Commission under seal. The Commission expected that aggregating the Inbound Letter Post revenue data by UPU country group would alleviate the concerns that have typically caused the Postal Service to file highly disaggregated revenue data non-publicly. Order No. 4409 at 6. The Commission previously explained that for the data at issue, aggregation masks foreign postal operator-specific data, which has generally been treated as non-public. *Id.* at 7.

¹⁷ For example, because EMS is an express service, the Commission found that, consistent with 39 U.S.C. § 3631(a)(3), inbound EMS is properly categorized as competitive. *Id.* at 82-83.

¹⁸ See Docket No. MC2012-44, Order Approving Request for Product List Transfer, September 10, 2012, at 9 (Order No. 1461) (the Postal Service requested, and the Commission approved, the transfer of outbound small packets from the Outbound Single-Piece First-Class Mail International product to the competitive product list as Outbound Single-Piece First-Class Package International Service); Docket No. MC2014-28, Order Approving Product List Transfer, August 19, 2014, at 8 (Order No. 2160) (the Postal Service requested, and the Commission approved, the transfer of Inbound Surface Parcel Post (at UPU rates) from the market dominant product list to the competitive product list).

As mentioned above, there are 192 UPU member countries. The UPU categorizes these 192 countries and their territories into 4 UPU country groups.¹⁹ Group I consists of 41 countries and territories; Group II consists of 34 countries and territories; Group III consists of 39 countries and territories; and Group IV consists of 105 countries and territories.²⁰ In its Response to CHIR No. 15, the Postal Service provides UPU country group revenue for letters/cards and flats (UPU Letter Post formats P and G), bulky letters and small packets (UPU Letter Post format E), and co-mingled UPU Letter Post mail.²¹ Table 1 depicts the nature of the information provided in response to CHIR No. 15 with XX denoting the data the Postal Service contests disclosing publicly.

Table 1
Inbound Letter Post Revenue Data
Aggregated by UPU Country Group and Shape

SHAPE	UPU GROUP I	UPU GROUP II	UPU GROUP III	UPU GROUP IV	TOTAL
Letters/Flats	XX	XX	XX	XX	XX
Bulky Letters/ Small Packets	XX	XX	XX	XX	XX
Co-Mingled	XX	XX	XX	XX	XX
TOTAL	XX	XX	XX	XX	XX

¹⁹ For purposes of UPU Letter Post mail remuneration, the UPU has established four country groups based on each member country's Gross National Income and the development of its postal system. Country Group I mainly consists of the world's most developed countries, while Group IV includes the least-developed countries as classified by the United Nations.

²⁰ Decisions of the 26th Congress other than those amending the Acts (resolutions, decisions, recommendations, formal opinions, etc.) (2017), Annex 2, Classification of countries and territories for terminal dues and Quality of Service Fund (QSF) purposes available at http://www.upu.int/uploads/tx_sbdownloader/actsLastCongressActsEn.pdf.

²¹ Not all foreign postal operators are required to sort their outbound mail by shape. Accordingly, the Postal Service receives some co-mingled Inbound Letter Post mail. See Responses of the United States Postal Service to Questions 1-10 of Chairman's Information Request No. 15, January 26, 2018, question 7.

III. PROCEDURAL HISTORY

A. Docket No. R2018-1

In Docket No. R2018-1, the U.S. Chamber of Commerce requested the Commission to unseal data that is necessary to calculate Inbound Letter Post revenues by UPU country group.²² In Order No. 4215, the Commission stated that such information could improve transparency related to international mail prices.²³ The Commission encouraged the “Postal Service to provide *publicly* available Inbound Letter Post revenue data by country group and shape in its FY 2017 Annual Compliance Report[.]” *Id.* at 36 (emphasis added).

B. Docket No. ACR2017

The Postal Service did not provide the aggregated Inbound Letter Post revenue data in its FY 2017 Annual Compliance Report (ACR). As a result, Chairman’s Information Request No. 1 requested that the Postal Service provide Inbound Letter Post revenue data by country group and shape.²⁴ When the Postal Service filed the requested data, it did so under seal.²⁵

²² See Docket No. R2018-1, U.S. Chamber of Commerce Motion to Unseal Library Reference and Motion to Request Issuance of Information Request, October 16, 2017 (Motion to Unseal); Docket No. R2018-1, US Chamber of Commerce Motion for Leave to Comment on the Postal Service’s Answer to Chairman’s Information Request No. 6, November 2, 2017, at 2 (Motion for Leave).

²³ Docket No. R2018-1, Order on Price Adjustments for First-Class Mail, USPS Marketing Mail, Periodicals, Package Services, and Special Services Products and Related Mail Classification Changes, November 9, 2017, at 35-36 (Order No. 4215).

²⁴ Chairman’s Information Request No. 1, January 5, 2018, question 1 (CHIR No. 1).

²⁵ Responses of the United States Postal Service to Questions 1-16 of Chairman’s Information Request No. 1, January 12, 2018, question 1 (Responses to CHIR No. 1). See Notice of the United States Postal Service of Filing of USPS–FY17–NP31 and Application for Nonpublic Treatment, January 12, 2018 (Notice of Filing USPS–FY17–NP31).

When it became apparent that the Postal Service filed information not requested by CHIR No. 1 in its Responses to CHIR No. 1,²⁶ CHIR No. 15 clarified the initial request and requested revenue data for the Inbound Letter Post product, as defined in the MCS, aggregated by country group and shape. CHIR No. 15 at 2. The Postal Service filed its Response to CHIR No. 15 under seal and filed an Application for Non-Public Treatment. Notice of Filing USPS–FY17–NP40; Application for Non-Public Treatment.

In the Application for Non-Public Treatment, the Postal Service states that it does not believe that any commercial enterprise would voluntarily disclose revenue data for its products that are subject to competition, as well as products for which rates could be negotiated with other postal operators. *Id.* at 1. Accordingly, the Postal Service views such information to be exempt from mandatory disclosure pursuant to 39 U.S.C. § 410(c)(2) and 5 U.S.C. § 552(b)(3) and (4). *Id.* at 1-2.

²⁶ Prior to realizing the Responses to CHIR No. 1 contained extraneous information, the Commission began the process to unseal the Responses to CHIR No. 1. See Notice of a Preliminary Determination to Unseal the Material Filed in Response to Chairman’s Information Request No. 1, Question 1, January 17, 2018, at 3 (Order No. 4377); Determination to Unseal the Material Filed in Response to Chairman’s Information Request No. 1, Question 1, January 26, 2018, at 7 (Order No. 4394). On January 29, 2018, the Postal Service filed a motion to stay Order No. 4394 due to pending judicial review. See Motion of the United States Postal Service to Stay Order No. 4394 Concerning the Unsealing of Material Filed in Response to Chairman’s Information Request No. 1, Question 1, January 29, 2018 (Motion for Stay); Petition for Review, *United States Postal Service v. Postal Regulatory Commission*, No. 18-1034 (D.C. Cir. Jan. 30, 2018).

On February 6, 2018, the Postal Service filed notice that it revised its response to CHIR No. 1, question 1 and revised its response to Order No. 4377. Notice of the United States Postal Service of Filing of Revised Version of USPS-FY17-NP31 – Errata, February 6, 2018 (USPS-FY17-NP31 Revised); Notice of Filing Revised Page to Nonpublic Version of the Response of the United States Postal Service to Order No. 4377 – Errata, February 6, 2018 (Revised Response to Order No. 4377). In reviewing the revised response, the Commission found that both responses to CHIR No. 1, question 1 contained data related to bilateral and multilateral agreements between the Postal Service and foreign postal operators as inputs in the aggregated revenue calculation, which exceeded the scope of the information requested in CHIR No. 1. As a result, the Commission issued Order No. 4410, which vacated Order No. 4394 and denied the Motion for Stay as moot. Order Vacating Order No. 4394, February 16, 2018, at 4-5 (Order No. 4410). The Postal Service then filed an unopposed motion to dismiss its petition for review, which was granted. See The United States Postal Service’s Unopposed Motion for Voluntary Dismissal, *United States Postal Service v. Postal Regulatory Commission*, No. 18-1034 (D.C. Cir. Feb. 20, 2018); Order, *United States Postal Service v. Postal Regulatory Commission*, No. 18-1034 (D.C. Cir. Feb. 27, 2018).

The Postal Service also alleges that its Response to CHIR No. 15 reveals proprietary third party information because a certain foreign postal operator is responsible for “a significant percentage of the revenue” from its country group. *Id.* at 2, 7. The Postal Service contends that competitors could use the aggregated revenue data to make decisions regarding investments, product design, or marketing and sales efforts that would cause the Postal Service and the foreign postal operator to lose existing or new business. *Id.* at 4, 7-8. The Postal Service states that it faces competition from almost 200 Extraterritorial Offices of Exchange (ETOE)s²⁷ and from private-sector international mailing operators. Application for Non-Public Treatment at 3. The Postal Service also contends that suppliers of services, such as transportation, could use the information to charge the Postal Service or the foreign postal operator higher rates for services associated with Inbound Letter Post. *Id.* at 8-9.

Furthermore, the Postal Service claims that the data provided in its Response to CHIR No. 15 is more disaggregated than the data provided in its Responses to CHIR No. 1. *Id.* at 3. The Postal Service contends that the Response to CHIR No. 15 offers data on a more discrete market for inbound untracked small packets, which is “susceptible to competition.” *Id.*

On February 16, 2018, the Commission issued a preliminary determination to unseal the Postal Service’s Response to CHIR No. 15. See Order No. 4409. Specifically, the Commission found that the potential commercial harms did not outweigh the public interest in financial transparency of a government entity competing

²⁷ An ETOE is an office or facility administered by or in connection with a foreign postal operator outside its national territory on the territory of another country. ETOEs perform a wide range of postal functions that include consolidating, documenting, and transporting international mail. United States Postal Service Office of Inspector General, Extraterritorial Offices of Exchange (Audit Report Number MS-WP-17-001), March 31, 2017, at 1 available at <https://www.uspsoig.gov/sites/default/files/document-library-files/2017/MS-WP-17-001.pdf>. United States policy provides that if mailpieces originating “from an ETOE in a foreign country . . . are to be delivered by the U.S. Postal Service to addresses in the United States, they must be mailed as domestic U.S. mail charged at domestic postage rates.” U.S. Policy Toward Extraterritorial Offices of Exchange (ETOE)s, U. S. Department of States, July 14, 2015 available at <https://2009-2017.state.gov/p/io/ipp/65178.htm>.

in commercial markets. *Id.* at 7. First, the Commission determined that it was not likely that disclosing the data at issue would reveal operator-specific data, as claimed by the Postal Service. *Id.* at 7-8. Specifically, Order No. 4409 noted that each of the four UPU country groups consists of at least 30 countries or territories. *Id.* at 7. Second, the Commission determined that it was unlikely that companies in the international mailing and shipping industry would analyze the aggregated revenue data and alter their behavior based on this analysis. *Id.* at 8.

IV. RESPONSES TO ORDER NO. 4409

The Postal Service, United Parcel Service, Inc. (UPS), the U.S. Chamber of Commerce, and the National Association of Manufacturers (NAM) filed responses to Order No. 4409.²⁸

A. Response in Opposition to Unsealing Response to CHIR No. 15

The Postal Service filed the sole response in opposition to unsealing the Response to CHIR No. 15. Postal Service Response at 2. The Postal Service puts forward three arguments against unsealing the aggregated revenue data.

1. Public Interest in Financial Transparency

The Postal Service characterizes the public interest here as “abstract” and as a “mere generalized interest in transparency[.]” *Id.* at 3, 7. The Postal Service contends that there is little public interest in disclosing the data at issue because the

²⁸ Response of the United States Postal Service to Order No. 4409, February 23, 2018 (Postal Service Response); Comments of United Parcel Service, Inc. in Response to Notice of Preliminary Determination to Unseal the Postal Service’s Response to Chairman’s Information Request No. 15, February 23, 2018 (UPS Response); Comments of U.S. Chamber of Commerce, February 23, 2018 (U.S. Chamber of Commerce Response); Comments to Docket No. ACR2017, Order No. 4009; Chairman’s Information Request No. 15 (CHIR), February 23, 2018 (NAM Response). The Postal Service incorporates by reference its response to Order No. 4377. Postal Service Response at 2 n.5.

Commission's preliminary determination to unseal the data at issue was self-initiated. *Id.* at 9. The Postal Service states that no participant sought disclosure in relation to the Commission's review of the Postal Service's ACR. *Id.* Additionally, it contends that granting non-public status to the Postal Service's Response to CHIR No. 15 would not prejudice participants because they can still request access to the information subject to protective conditions. *Id.* The Postal Service also notes that CHIR No. 15 requested revenue data for FY 2016, not FY 2017. *Id.*

2. Commercial Harm

The Postal Service asserts that the real commercial harm that would result from disclosure outweighs the public interest in maintaining financial transparency of a government establishment. *Id.* at 3. It contends that the aggregated revenue data is non-public because it reveals "commercially sensitive, and competitively valuable, country-specific data because of the reality that revenue from at least one particular postal operator overwhelmingly dominates its UPU country group." *Id.* at 4. The Postal Service claims that the Commission cannot treat the revenue data at issue as aggregated country group data because casual observers and sophisticated industry participants alike would be able to determine market size and market share of at least one foreign postal operator within a small margin of error. *Id.* at 4-5.

The Postal Service acknowledges that inbound small packets, which are part of the Inbound Letter Post product, are included on the market dominant product list, but nonetheless asserts that there is a competitive market for such mailpieces and that it has never disclosed information on Inbound Letter Post volumes by shape. *Id.* at 6. The Postal Service reiterates that it competes with over 200 ETOEs, approximately 40 of which operate in the United States, and private-sector operators in the Inbound Letter

Post market.²⁹ The Postal Service repeats its previous claims that these competitors could analyze the aggregated revenue data to identify possible market strengths and weaknesses to inform their sales and marketing efforts worldwide. *Id.* at 7.

The Postal Service then addresses what it identifies as the Commission's two rationales for unsealing the aggregated revenue data: (1) aggregated country group revenue data requires competitors to make assumptions to determine country-specific data from the group data and (2) risk of competitors using aggregated country group revenue data is minimal because they have already identified desirable markets. *Id.* at 8. The Postal Service argues that although competitors do not know the specific revenue generated by one foreign postal operator within its country group, competitors would, based on their experience and knowledge of the market, learn a "useful approximation of the country-specific revenue." *Id.* Furthermore, the Postal Service notes that the Commission's second rationale appears at odds with its first as competitors would only be able to identify desirable markets if they had information necessary to make investment choices based on "reliable, non-speculative assumptions." *Id.* It also claims that although competitors already have certain information about the market, the aggregated revenue data would enhance competitors' ability to make more informed business decisions. *Id.* at 8-9.

3. Consistency with Past Commission Treatment of International Mail Data

The Postal Service contends that the preliminary determination to unseal the Postal Service's Response to CHIR No. 15 "constitutes an arbitrary and capricious

²⁹ *Id.* The Postal Service's description of the number of ETOEs is inconsistent. In the Postal Service's Response to Order No. 4377 and its Application for Non-Public Treatment, the Postal Service states that "there are currently almost 200 [ETOE]s operating worldwide." Postal Service Response to Order No. 4377 at 3; Application for Non-Public Treatment at 3. It is noteworthy that the ETOEs located in the United States do not enter Inbound Letter Post mail but rather send international mail to destination countries outside the United States and therefore are not competitors in the way the Postal Service identifies.

departure from past Commission practice without any reasoned justification.” *Id.* at 9 (footnote omitted). The Postal Service provides three specific examples of how it contends Order No. 4409 departs from past Commission treatment of international mail data.

First, it notes that the Commission has acknowledged that it considers operator-specific data to be non-public. *Id.* at 9-10. The Postal Service contends, however, that in Order No. 4409, the Commission preliminarily determines to unseal operator-specific data without acknowledging the departure from past practice. *Id.* at 10.

Second, the Postal Service also notes that the Commission has treated Inbound Letter Post data, aggregated by target system and transition system countries,³⁰ as non-public in two recent annual compliance review proceedings. *Id.* at 11. It contends that because Order No. 4409 preliminarily determined to unseal Inbound Letter Post data at what the Postal Service characterizes as a more disaggregated level, Order No. 4409 represents an arbitrary departure from past practice. *Id.*

Third, the Postal Service alleges that the preliminary determination represents a break from Postal Rate Commission treatment of international mail data.³¹ It notes that in Docket No. IM99-1, the Postal Rate Commission denied a UPS request for access to disaggregated international mail data submitted by the Postal Service. *Id.* The Postal Service also states that when the Postal Rate Commission responded to a Freedom of Information Act (FOIA) request in 1999, although the Postal Service did not object to the disclosure of inbound revenue data, the Postal Rate Commission accepted its proposed redactions to the ICRA. *Id.* The Postal Service also cites dicta from the same decision

³⁰ The International Cost and Revenue Analysis (ICRA) report aggregates inbound international mail data by target system and transition system countries. Target system countries are generally more industrialized countries and pay higher terminal dues. Transition system countries are generally developing or less industrialized countries and pay lower terminal dues. The UPU system determines whether countries are in the target system or the transition system based on the country's Gross National Income and the development of their postal system. Countries in Groups I, II, and III are in the target system, and countries in Group IV are in the transition system.

³¹ *Id.* The Postal Rate Commission was the predecessor agency to the Postal Regulatory Commission, which was established by the PAEA.

where the Postal Rate Commission disclosed revenue data for a European bilateral group and a group of all other UPU countries “except where redaction [was] needed to prevent country-specific data from being disclosed indirectly.” *Id.* at 12-13 (emphasis omitted).

B. Responses in Support of Unsealing Response to CHIR No. 15

UPS, the U.S. Chamber of Commerce, and NAM all support unsealing the aggregated Inbound Letter Post revenue data. They offer several arguments in support of disclosing the data at issue.

1. Public Interest in Financial Transparency

UPS, the U.S. Chamber of Commerce, and NAM argue that there is substantial public interest in maintaining financial transparency. These participants state that there is a need for enhanced transparency surrounding the Inbound Letter Post product. UPS Response at 2; U.S. Chamber of Commerce Response at 1. For example, both UPS and the U.S. Chamber of Commerce note the importance of maintaining financial transparency when a government entity competes in a commercial market. UPS Response at 3; U.S. Chamber of Commerce Response at 1. In its response, UPS contends that the public interest in maintaining financial transparency for the Inbound Letter Post product, a market dominant product, is no different from the public interest in maintaining financial transparency for other market dominant products.³² UPS notes that there is a lack of transparency surrounding Inbound Letter Post and the terminal dues system.³³

³² UPS Response at 3 (citing Docket No. R2018-1, U.S. Chamber of Commerce Motion to Unseal Library Reference and Motion to Request Issuance of Information Request, October 13, 2017, at 1).

³³ *Id.* at 3. Specifically, UPS notes that the Postal Service does not publicly disclose terminal dues themselves. *Id.* UPS also reiterates its request that the Commission order the Postal Service to disclose Inbound Letter Post volume, cost, and weight data by country group and shape. *Id.* at 5.

Additionally, these participants assert that enhanced transparency is especially important in the case of the Inbound Letter Post product. UPS Response at 3; U.S. Chamber of Commerce Response at 2; NAM Response at 2. Specifically, the U.S. Chamber of Commerce contends that transparency is “acutely important” in the context of the Inbound Letter Post product because the UPU terminal dues system “distorts competition . . . and places domestic competitors at a disadvantage[.]” U.S. Chamber of Commerce Response at 2. UPS asserts that there is a significant need for enhanced transparency because unsealing the aggregated Inbound Letter Post revenue data “will facilitate the public’s ability to evaluate and address the problem of subsidization of foreign shippers.”³⁴ Similarly, NAM concludes that the public interest here outweighs the nature and extent of any likely commercial harm to the Postal Service. NAM Response at 2.

2. Commercial Harm

UPS and NAM contend that unsealing the Postal Service’s Response to CHIR No. 15 will not result in the commercial harm identified by the Postal Service. See UPS Response at 5; NAM Response at 2. UPS asserts that unsealing the Response to CHIR No. 15 will not reveal any country-specific data and will not cause any commercial harm to foreign postal operators. UPS Response at 5. UPS observes that “[a]ggregating data is a commonly accepted way to avoid the disclosure of truly commercially sensitive information[.]” *Id.* at 5. NAM agrees that unsealing the Response to CHIR No. 15 will not reveal operator-specific data and states that it is

³⁴ UPS Response at 2. UPS puts forth two reasons why the public needs to be able to evaluate terminal dues: (1) domestic businesses, retailers, and manufacturers are harmed on a daily basis by the fact that foreign mailers are charged less than domestic mailers to send mail within the United States; and (2) the negative effects of the UPU terminal dues system on market dominant mailers, especially those who may be asked to pay higher prices to generate the revenue needed to cover the negative contribution from the Inbound Letter Post product. UPS Response at 3-4.

“hard-pressed to imagine how . . . competitors would use this revenue data to out-compete [the Postal Service.]”³⁵

Additionally, NAM disagrees with the Postal Service’s position that the aggregated Inbound Letter Post data is too sensitive to disclose publicly. *Id.* Specifically, NAM takes issue with the Postal Service’s claim that no “commercial enterprise would voluntarily disclose revenue data for its products that are subject to competition.” *Id.* at 1 (footnote omitted). NAM provides several examples where companies publicly provide aggregated revenue data. *Id.* NAM also notes that the Postal Service is “unlike other commercial enterprises because [it is] a public agency subject to stringent [Commission] regulation and oversight in the public interest.” *Id.* at 2.

V. COMMISSION ANALYSIS

A. Introduction

The question before the Commission is whether the Postal Service has fulfilled its burden of persuasion that the aggregated revenue data for a market dominant product, Inbound Letter Post, should be withheld from public disclosure. 39 C.F.R. § 3007.21(b). For the reasons discussed below, the Commission concludes that the Postal Service has not met its burden and that the public interest in maintaining the financial transparency of the Postal Service, a government establishment operating in commercial markets, outweighs the nature and extent of any likely commercial harm that may result from disclosing the aggregated, market dominant data.

³⁵ NAM Response at 2. NAM also questions why companies in the international mailing and shipping industry would want to out-compete the Postal Service for “this very un-lucrative inbound business.” *Id.* NAM suggests that it may be fiscally irresponsible for such companies to attempt to do so. *Id.*

B. Legal Standard

Section 3652 of title 39 governs the information at issue in this proceeding. Under 39 U.S.C. § 3652(f)(1), information filed in this proceeding and claimed to be non-public by the Postal Service shall be treated under the procedures of 39 U.S.C. §§ 504(g)(2) and (3). 39 U.S.C. § 3652(f)(2). Section 504(g)(3) of title 39 establishes the Commission's authority as it relates to information filed with the Commission and claimed to be non-public by the Postal Service. Specifically, 39 U.S.C. § 504(g)(3)(A) states that the Commission is not prohibited from publicly disclosing such information as long as two conditions are met. First, the Commission must have engaged in a rulemaking to "establish a procedure for according appropriate confidentiality to information identified by the Postal Service [as non-public]." 39 U.S.C. § 504(g)(3)(A). Second, in determining the appropriate degree of confidentiality to be given to information alleged to be non-public by the Postal Service, 39 U.S.C. § 504(g)(3)(A) directs the Commission to "balance the nature and extent of the likely commercial injury to the Postal Service against the public interest in maintaining the financial transparency of a government establishment competing in commercial markets." *Id.*

In 2009, the Commission satisfied the first condition when it established procedures for treatment of materials filed by the Postal Service and claimed to be non-public.³⁶ When the Postal Service files materials under seal, it must submit an application for non-public treatment that "clearly identifies all non-public materials." 39 C.F.R. § 3007.21(a). The purpose of the application is to "fulfill the burden of persuasion that the non-public materials should be withheld from the public."³⁷ The

³⁶ Docket No. RM2008-1, Final Rule Establishing Appropriate Confidentiality Procedures, June 19, 2009 (Order No. 225). See 39 C.F.R. part 3007.

³⁷ 39 C.F.R. § 3007.21(b). Once the Postal Service meets requirements of section 3007.21, the Commission preliminarily treats those materials as non-public materials as provided in section 3007.23. The Commission's longstanding practice is that it does not "accept" any rationale for non-public treatment unless it makes a determination of non-public status pursuant to rule 3007.32, or in response to a motion for early termination of non-public status. Docket No. RM2009-6, Order Establishing Procedures for the Freedom of Information Act, October 23, 2009, at 9 (Order No. 322).

Commission recognized that when reviewing Postal Service materials filed under seal for substance, it “may have cause to question the claim that part or all of the materials should not be disclosed.” Order No. 225 at 14. Accordingly, when the Commission adopted procedures for treatment of materials filed by the Postal Service under seal, consistent with its authority under section 504(g)(3)(A), the Commission provided a mechanism to disclose materials identified by the Postal Service as non-public *sua sponte*. 39 C.F.R. § 3007.32.

As described above, and in accordance with 39 C.F.R. § 3007.32, the Commission issued Order No. 4409, which contained a notice of preliminary determination concerning the appropriate degree of protection, if any, to be accorded to the aggregated Inbound Letter Post revenue data at issue in this proceeding and allowed 7 days for responses. 39 C.F.R. §§ 3007.32(a), (b). In accordance with 39 C.F.R. § 3007.32(d), this Order undertakes the final procedural step, “an order determining the appropriate degree of protection, if any, to be accorded to the materials claimed to be non-public by the Postal Service[.]” Section 3007.33(a) incorporates the standard for issuing a determination to terminate the non-public status of material filed under seal by the Postal Service from 39 U.S.C. § 504(g)(3)(A):

In determining whether to publicly disclose non-public materials filed by the Postal Service, the Commission shall balance the nature and extent of the likely commercial injury identified by the Postal Service against the public interest in maintaining the financial transparency of a government entity competing in commercial markets.

39 C.F.R. § 3007.33(a).

In fulfilling the second condition of 39 U.S.C. § 504(g)(3)(A), the Commission undertakes a highly fact-specific analysis of the public interest in maintaining the financial transparency of a government entity competing in commercial markets, with a particular focus on the specific data at issue, and weighs it against the nature and extent of any likely commercial injury to the Postal Service from disclosure of that data. This requires the Commission to evaluate the likelihood of the potential commercial

harm identified by the Postal Service in its Application for Non-Public Treatment. In the sections that follow, the Commission first discusses the public interest in maintaining financial transparency, followed by a discussion of the nature and extent of any likely commercial harm with regard to the data at issue.

C. Public Interest in Maintaining Financial Transparency

1. Transparency Under Title 39

Enacted in 2006, the PAEA made significant changes to the regulation of the Postal Service, which included increased transparency and accountability and enhanced the authority and responsibilities of the Commission.³⁸ Although there was no committee or conference report issued for the bill that was enacted into law, the legislative history underlying the PAEA confirms that enhanced transparency was a key motivation in the enactment of postal reform. For example, both the committee report accompanying S. 2468, the Senate's 2004 postal reform bill, and the committee report accompanying H.R. 22, the House of Representatives' 2005 postal reform bill, noted that enhanced transparency and accountability were essential aspects of postal reform.³⁹ Both reports emphasized that transparency is necessary to ensure fair treatment of Postal Service customers and its competitors. S. Rep. No. 108-318 at 5; H.R. Rep. No. 109-66 at 46. Consistent with Congress's intent to enhance accountability through increased transparency, the PAEA grants the Commission

³⁸ See, e.g., 39 U.S.C. §§ 3622, 3652, 3653, 3662. For an extended discussion of the differences between the PAEA and its predecessor legislation, see Docket No. RM2017-3, Order on the Findings and Determination of the 39 U.S.C. § 3622 Review, December 1, 2017, at 23-45 (Order No. 4257).

³⁹ S. Rep. No. 108-318 at 5 (2004), H.R. Rep. No. 109-66, pt. 1 at 43 (2005).

authority to disclose materials identified as non-public by the Postal Service. 39 U.S.C. § 504(g)(3).⁴⁰

The Commission's role and authority in this particular docket, which facilitates review of the Postal Service's ACR and the issuance of the Commission's Annual Compliance Determination (ACD) pursuant to 39 U.S.C. §§ 3652 and 3653, is a key part of the PAEA's objective to increase transparency. Section 3652(a)(1) established new reporting requirements for the Postal Service that the Senate committee report described as a method to improve transparency. S. Rep. No. 108-318 at 19-20. To ensure the Commission and interested participants have sufficient information, the PAEA grants the Commission authority to prescribe, by regulation, the content and form of the public reports the Postal Service shall provide with its ACR. 39 U.S.C. § 3652(e)(1). The PAEA also requires the Commission to consider the provision of timely, adequate information to the public when prescribing the content and form of the ACR. *Id.* at § 3652(e)(1)(A). This requirement further highlights the importance of postal transparency, particularly with regard to this docket.

After considering the recent filings that expressed concern regarding the lack of transparency for Inbound Letter Post,⁴¹ CHIR No. 15 sought Inbound Letter Post revenue data at a similar level of aggregation as the Postal Service provides for other market dominant products. As discussed in more detail below, the Commission finds that the Inbound Letter Post product should be subject to a similar level of transparency as other market dominant products.

⁴⁰ Although transparency related to 39 U.S.C. § 504(g)(3) is central to the issue in this Order, many of the PAEA's provisions sought to enhance transparency. For example, 39 U.S.C. § 3654 requires that the Postal Service file extensive financial reporting information with the Commission and requires that the information comply with several reporting requirements required by "registrants" before the Securities and Exchange Commission. 39 U.S.C. § 3654(a),(b). Additionally, the PAEA enhanced transparency by including "increase the transparency of the ratemaking process" as one of the nine objectives of the market dominant ratemaking system. 39 U.S.C. § 3622(b)(6). In Docket No. RM2017-3, the Commission found that the system "increased transparency . . . if comprehensive and understandable material relating to each rate proceeding was available to stakeholders." Order No. 4257 at 81.

⁴¹ For a discussion of these filings, see section V.C.4, *infra*.

2. Public Interest in Financial Transparency for Market Dominant Products

The Postal Service's argument that the data at issue is more detailed than revenue data generally provided for competitive inbound international products and therefore should be sealed is unpersuasive. See Postal Service Response at 6 n.13. Unlike the competitive inbound international products referenced by the Postal Service, the MCS currently lists the Inbound Letter Post product on the market dominant product list.⁴² The classification of the Inbound Letter Post product as market dominant is important because, under the PAEA, different statutory and regulatory schemes apply to market dominant and competitive products. See 39 U.S.C. §§ 3621, 3622, 3631, 3633. As discussed in section II.B, the PAEA defines market dominant products as products over which "the Postal Service exercises sufficient market power that it can effectively set the price of such product substantially above costs, raise prices significantly, decreases quality, or decrease output, without risk of losing a significant level of business to other firms offering similar products." 39 U.S.C. § 3642(b)(1). Thus, by definition, the Postal Service exercises substantial market power over market dominant products.

As discussed in section V.B, Congress viewed increased transparency under the PAEA as essential to ensuring fair treatment of Postal Service customers and competitors. H.R. Rep. No. 109-66, pt. 1 at 46, S. Rep. No. 108-318 at 1. For market dominant products, there is substantial public interest in maintaining financial transparency because, by definition, the Postal Service is able to exercise market power over market dominant customers. Financial transparency regarding market dominant products provides information necessary to hold the Postal Service accountable and

⁴² See MCS Section 1130. The Postal Service also asserts that revenue data in general is commercially sensitive. *Id.* at 3-4 (citing *DNC Parks & Resorts at Yosemite, Inc. v. U.S.*, 127 Fed. Ct. 435 (2016)). The Commission notes that the data at issue in *DNC Parks & Resorts at Yosemite, Inc.* also relates to a service that would be considered competitive (*i.e.*, government contracts for concessions at Yosemite National Park) and, thus, is not applicable here.

evaluate, for example, whether the rates paid comply with the law and how revenues compare to associated costs.

This transparency is particularly important when a government establishment competes in commercial markets. Because market dominant and competitive products have different regulatory requirements, including those related to pricing, customers and competitors have an interest in financial transparency for accountability purposes. For example, both market dominant customers and competitors have a public interest in being able to confirm that the Postal Service has not used its market dominant revenue in ways that violate the law (*e.g.*, using market dominant revenues to subsidize competitive products in violation of 39 U.S.C. § 3633). This financial transparency allows competitors to monitor whether the Postal Service competes fairly in competitive markets, while allowing captive, market dominant customers to ensure their rates are not subsidizing competitive products.

The MCS currently classifies the Inbound Letter Post product, including inbound small packets, as a market dominant product. MCS Section 1130. The Postal Service acknowledges this fact. Postal Service Response at 6, 7. However, the Postal Service also repeatedly claims that, notwithstanding its classification as a market dominant product, the Inbound Letter Post product, specifically small packets, is subject to

considerable competition.”⁴³ The Postal Service has not offered any evidence to support its claims of “considerable competition.”

Under the PAEA, the Postal Service, users of the mail, and the Commission *sua sponte*, each have the authority to initiate a proceeding before the Commission to transfer products from the market dominant product list to the competitive product list and vice versa. 39 U.S.C. § 3642(a). In previous proceedings, the Postal Service has requested, and the Commission has approved, the transfer of several international mail products from the market dominant product list to the competitive product list.⁴⁴ Significantly, the Postal Service has not made a similar request to transfer the Inbound Letter Post product generally, or inbound small packets specifically, to the competitive products list. Instead, as described in more detail in the section that follows, the Postal Service seeks non-public status for aggregated revenue data that it typically files publicly for market dominant products.

3. Postal Service Routinely Files Revenue Data for Market Dominant Products Publicly

⁴³ *Id.* at 5 (small packets “already face considerable competition today.” (footnote omitted)); *id.* at 6 (“the Postal Service operates in a competitive market for inbound international shipping, which includes inbound small packets containing merchandise.” (footnote omitted)); *id.* at 6 n.13 (“Not only are Inbound Letter Post packets subject to considerable competition, but bulk international letter and flat mail can be subject to competition as well.”); Application for Non-Public Treatment at 2 (“Not only are Inbound Letter Post packets (E Format) subject to considerable competition, but bulk international letter and flat mail (P and G Format) can be subject to competition as well.”); *id.* at 3 (“The Postal Service is just one of the participants operating in the competitive market for inbound international shipping, which includes inbound small packets containing merchandise.”); Docket No. R2018-1, United States Postal Service Answer in Opposition to U.S. Chamber of Commerce Motion to Unseal Library Reference and Motion to Request Issuance of Information Request, October 23, 2017, at 4 (“inbound letter post . . . face[s] significant competition from private sector competitors and Extraterritorial Offices of Exchange[.]” The competitive nature of the international market, particularly with respect to [Outbound Single-Piece First-Class Mail International] and inbound letter post packets weighing 4.4 pounds or less, is well established.” (footnote omitted)).

⁴⁴ See Docket No. MC2014-28, Order Approving Product List Transfer, August 19, 2014, at 8 (Order No. 2160); Docket No. MC2012-44, Order Approving Request for Product List Transfer, September 10, 2012, at 9 (Order No. 1461).

When filing supporting documentation with its ACR, the Postal Service regularly and consistently provides detailed revenue data for market dominant products publicly.⁴⁵ Because the Outbound Single-Piece First-Class Mail International product is the outbound market dominant counterpart to the Inbound Letter Post product, it offers a telling example of the level of transparency the Postal Service generally provides for market dominant products.⁴⁶ Significantly, the Postal Service publicly files Outbound Single-Piece First-Class Mail International revenue data, aggregated by Postal Service-defined country group and by shape (*i.e.* letters, postcards, and flats).⁴⁷ Furthermore, for letter and flat shaped Outbound Single-Piece First-Class Mail, the Postal Service

⁴⁵ See Docket No. ACR2016, Library Reference USPS–FY16–4, December 29, 2016; Docket No. ACR2016, Library Reference USPS–FY16–41, December 29, 2016; Docket No. ACR2015, Library Reference USPS–FY15–4, December 29, 2015 (Revised March 25, 2016); Docket No. ACR2015, Library Reference USPS–FY15–41, December 29, 2015; Docket No. ACR2014, Library Reference USPS–FY14–4, December 29, 2014 (Revised February 6, 2015 and April 15, 2015); Docket No. ACR2014, Library Reference USPS–FY14–41, December 29, 2014.

⁴⁶ As discussed in section II.B., *supra*, in Order No. 43, the Commission classified inbound UPU Letter Post mail as market dominant and included such mailpieces in the Inbound Letter Post product. Order No. 43 also classified non-priority single-piece outbound UPU Letter Post mail as market dominant and included such mailpieces in the Outbound Single-Piece First-Class Mail International product. See Order No. 43 at 84-85. Both products relate to UPU Letter Post mail. Inbound Letter Post relates to UPU Letter Post mail sent from outside the United States to a destination inside the United States. Outbound Single-Piece First-Class Mail International relates to single-piece non-priority UPU Letter Post mail sent by a mailer inside the United States to a destination outside the United States. Bulk outbound UPU Letter Post mail products, International Priority Airmail and International Surface Air Lift, are included on the competitive product list.

⁴⁷ Library Reference USPS–FY17–41, December 29, 2017, Excel file “USPS.FY17.41 MKT_DOMINANT_INTL_BD.xlsx,” tabs “FCMI CALCULATED REVENUE” and “FCMI REVENUE CALCS.” The Postal Service charges different prices for Outbound Single-Piece First-Class Mail International based on the destination country. The Postal Service groups destination countries into nine distinct country groups. The composition of these nine Postal Service-defined country groups differ from the four country groups under the UPU system. The composition of these nine Postal Service-defined country groups is found in the *International Mail Manual* and are available at <https://pe.usps.com/cpim/ftp/manuals/imm/immpg.pdf>. Significantly, there is only one destination country in Postal Service-defined country Group 1 and only one destination country in Group 2. *Id.* Additionally, it is noteworthy that there are five destination countries in Postal Service-defined country Group 3. *Id.*

also publicly provides revenue by weight.⁴⁸ Table 2 is an excerpt of the aggregated revenue data that the Postal Service provided for the Outbound Single-Piece First-Class Mail International product in its FY 2017 ACR.⁴⁹

Table 2
Aggregated Revenue Data for Outbound Single-Piece
First-Class Mail International Letters

OZ.	GROUP 1	GROUP 2	GROUP 3	GROUP 4	GROUP 5	GROUP 6	GROUP 7	GROUP 8	GROUP 9	TOTAL
1	55,759,059	2,685,621	10,287,090	5,270,230	39,756,334	7,729,645	1,663,336	719,630	9,100,267	132,971,211
2	2,071,943	295,669	1,727,517	680,543	6,125,717	1,193,789	273,442	145,567	1,339,697	13,853,884
3	608,593	51,855	298,078	119,405	1,049,382	182,386	37,319	17,659	228,097	2,592,774
3.5	206,886	9,110	46,338	26,982	155,119	29,275	10,315	2,616	30,060	516,700
TOTAL	58,646,481	3,042,254	12,359,022	6,097,160	47,086,552	9,135,096	1,984,412	885,472	10,698,121	149,934,569

Source: Library Reference USPS–FY17–41, Excel file “USPS.FY17.41 MKT_DOMINANT_INTL_BD.xlsx,” tab “FCMI CALCULATED REVENUE,” rows 12-17.

For purposes of comparison, Table 1, *supra* illustrates the data provided by the Postal Service in the Response to CHIR No. 15. Similar to the aggregated revenue data the Postal Service files publicly for Outbound Single-Piece First-Class Mail International, CHIR No. 15 requested the Postal Service provide revenue data aggregated by UPU country group for the Inbound Letter Post product. However, in the case of the Inbound Letter Post product, because there are four UPU country groups, the requested data is more aggregated than the Outbound Single-Piece First-Class Mail International revenue data provided for the nine Postal Service-defined country groups.

⁴⁸ Library Reference USPS–FY17–41, Excel file “USPS.FY17.41 MKT_DOMINANT_INTL_BD.xlsx,” tabs “FCMI CALCULATED REVENUE” and “FCMI REVENUE CALCS.” Although Order No. 43 initially classified outbound small packets as part of the Outbound Single-Piece First-Class Mail International product, this product no longer includes outbound small packets. In Docket No. MC2012-44, the Postal Service requested, and the Commission approved, the transfer of outbound small packets from the market dominant Outbound Single-Piece First-Class Mail International product to the competitive product list as the First-Class Package International Service. Order No. 1461 at 9. As discussed in section II.B, *supra*, the Postal Service has made no such request for inbound small packets.

⁴⁹ The Attachment contains the publicly filed billing determinants for the Outbound Single-Piece First-Class Mail International product in their entirety. As seen in the Attachment, the Postal Service publicly filed aggregated revenue data, by Postal Service-defined country groups and by shape and weight, for the Outbound Single-Piece First-Class Mail International product. Attachment.

Additionally, CHIR No. 15 requested Inbound Letter Post data by shape only, whereas the Postal Service provides Outbound Single-Piece First-Class Mail International revenue data by shape and weight. See Attachment. As illustrated by Table 2 and the Attachment, the Postal Service publicly files market dominant international mail revenue data at a more disaggregated level than the requested Inbound Letter Post revenue data at issue.

Although Outbound Single-Piece First-Class Mail International is the market dominant product most similar to the Inbound Letter Post product, the Postal Service also consistently provides detailed revenue data for domestic market dominant products.⁵⁰ For example, for the First-Class Mail Presorted Letters/Postcards product, the Postal Service provides revenue data for First Ounces, Additional Ounces, and Picture Permit.⁵¹ Furthermore, within these First Ounces and Additional Ounces sub-product groupings, the Postal Service provides revenue data for each rate level, *i.e.* Mixed AADC Automation, AADC Automation, 3-Digit Automation, etc.⁵² The Postal Service provides similarly detailed revenue data for other domestic market dominant products.⁵³ For all products with generally applicable prices, Inbound Letter Post is the only market dominant product where the Postal Service files this information under seal.

⁵⁰ See Library Reference USPS–FY17–4, December 29, 2017, folder “BD FY 2017 MKT Dominant.”

⁵¹ Library Reference USPS–FY17–4, folder “BD FY 2017 MKT Dominant,” sub-folder “First-Class Mail,” Excel file “FY 2017 FCM.xlsx” tab “A-4 Automation Letters,” cells D35, D42, and D47.

⁵² See Library Reference USPS–FY17–4, folder “BD FY 2017 MKT Dominant,” sub-folder “First-Class Mail,” Excel file “FY 2017 FCM.xlsx” tab “A-4 Automation Letters,” cells D35-47.

⁵³ See Library Reference USPS–FY17–4, folder “BD FY 2017 MKT Dominant,” sub-folder “Marketing Mail,” Excel file “FY2017 USPS Marketing Mail BD – Public Final.xlsx;” Library Reference USPS–FY17–4, folder “BD FY 2017 MKT Dominant,” sub-folder “Package Services” Excel files “BD – Media and Library FY 2017 FINAL.xlsx” and “BPMFY2017BD.xlsx.”

4. There is a Lack of Transparency Surrounding Inbound Letter Post

The Postal Service characterizes the public interest here as a “mere generalized interest in transparency” and notes that no participant requested the Commission to unseal the data at issue or requested access. Postal Service Response at 2 n.3, 3, 9. Pursuant to 39 C.F.R. § 3007.32, there is no requirement that a participant request that data be unsealed prior to the Commission exercising its authority to direct the Postal Service to file data non-publicly. Furthermore, postal stakeholders have requested enhanced transparency into the Inbound Letter Post product. For example, both Federal Express Corporation (FedEx) and the U.S. Chamber of Commerce previously requested Inbound Letter Post revenue data by UPU country group and by shape.⁵⁴

In response to a request from the U.S. Chamber of Commerce for Inbound Letter Post revenue data, by UPU country group and shape, the Commission stated that requested data could improve transparency and encouraged the Postal Service to file such data publicly with its FY 2017 ACR. *Id.* at 35-36. When the Postal Service did not file the aggregated Inbound Letter Post revenue data with its FY 2017 ACR, CHIR No. 15 requested the Postal Service file the data publicly.⁵⁵ When the Postal Service filed

⁵⁴ See Docket No. IM2016-1, Motion of Federal Express Corporation, June 16, 2016. The Commission denied FedEx’s request for aggregated Inbound Letter Post data because 39 C.F.R. part 3017 does not provide participants the opportunity for discovery. Docket No. IM2016-1, Order Granting, in Part, Request for Data and Explanations, July 14, 2016, at 7 (Order No. 3427); *see also* Docket No. R2018-1, US Chamber of Commerce Motion for Leave to Comment on the Postal Service’s Answer to Chairman’s Information Request No. 6, November 2, 2017, at 2 n.2. The U.S. Chamber of Commerce indicated that it would not object if the only information made publicly available was data necessary to calculate Inbound Letter Post revenue by country group and shape. In Order No. 4215, the Commission noted that the library reference in question did not contain Inbound Letter Post revenue data at that level of aggregation. Order No. 4215 at 35.

⁵⁵ CHIR No. 15 at 2. CHIR No. 15 requested Inbound Letter Post revenue data, by UPU country group and shape, for FY 2016 because the U.S. Chamber of Commerce previously requested this data and the Commission acknowledged that the data could enhance transparency. See Order No. 4215 at 35-36. Additionally, the Commission notes that it routinely requests data from previous fiscal years during an annual compliance review proceeding. See Chairman’s Information Request No. 9, January 25, 2018 question 1.a (requests data pertaining to FY 2014, FY 2015, FY 2016, and FY 2017); Chairman’s Information Request No. 11, January 31, 2018, question 4 (requests data pertaining to FY 2015 and FY 2016), question 5 (requests data pertaining to FY 2016); question 7 (requests data pertaining to FY

the requested data under seal, the Commission reviewed the Postal Service's Application for Non-Public Treatment and preliminarily determined that the response should be unsealed. Thus, the Commission's preliminary determination is not self-initiated, as claimed by the Postal Service, but responsive to earlier requests for enhanced transparency into the Inbound Letter Post product generally and this data specifically.⁵⁶

It is noteworthy that the Postal Service is the only participant who opposes unsealing the data at issue. Numerous participants have supported disclosure. In this docket, UPS, the U.S. Chamber of Commerce, and NAM all support unsealing the aggregated Inbound Letter Post revenue data. Additionally, UPS, the U.S. Chamber of Commerce, NAM, the Association for Postal Commerce, the International Housewares Association (IHA), Congressman Kenny Marchant, and James Smaldone, Founder and CEO of Mighty Mug, Inc. (Mighty Mug) all filed responses supporting disclosure of similar revenue data for inbound international mail.⁵⁷ This indicates significant public interest in increasing financial transparency related to Inbound Letter Post.

2016); Chairman's Information Request No. 17, February 9, 2018, question 3 (requests data pertaining to FY 2014, FY 2015, FY 2016, and FY 2017).

⁵⁶ However, even if no participant requested the Commission to unseal material identified as non-public by the Postal Service, the Commission has authority to preliminarily determine to disclose information filed under seal by the Postal Service *sua sponte*. See section V.B, *supra*.

⁵⁷ Comments of United Parcel Service, Inc. in Response to Notice of Preliminary Determination to Unseal the Material Filed in Response to Chairman's Information Request No. 1, Question 1, January 24, 2018; Comments of US Chamber of Commerce, January 25, 2018; Comments to Docket No. ACR2017, Order No. 4377; Chairman's Information Request, January 24, 2018; Response of the Association for Postal Commerce to Order No. 4377, January 24, 2018; Comments of the International Housewares Association, January 25, 2018; Comments of the Honorable Kenny Marchant on Determination to Unseal the Material Filed in Response to Chairman's Information Request No. 1, Question 1, January 25, 2018; Comments of James Smaldone, Founder & CEO, Mighty Mug, Inc., January 25, 2018. The Association for Postal Commerce supported the U.S. Chamber of Commerce's motion to unseal international mail data in Docket No. R2018-1. Docket No. R2018-1, Comments of the Association for Postal Commerce, October 26, 2017, at 1, 8.

5. Access to Sealed Documents is not Equivalent to Public Disclosure

The Postal Service's argument that participants are not prejudiced if the data at issue is sealed because participants can request access to non-public material pursuant to 39 C.F.R. §§ 3007.40 and 3007.50 misconstrues the Commission's rules in 39 C.F.R. part 3007. Receiving access to non-public material under 39 C.F.R. §§ 3007.40, and 3007.50 does not achieve the transparency associated with public disclosure. Receiving access and public disclosure are two different courses of action dependent on whether the material at issue should be withheld from public disclosure in accordance with 39 U.S.C. § 504(g).

If material is treated as non-public, 39 C.F.R. §§ 3007.40 and 3007.50 allow participants to file a motion requesting access to that information. If the motion is granted, access to non-public material is subject to certain restrictions and obligations that include a prohibition on disclosing the materials and limitations on those who can access competitive information. See 39 C.F.R. § 3007.60; see *also* Appendix A to Part 3007. Furthermore, once granted access, participants may only view non-public materials for a limited time and purpose. See 39 C.F.R. §§ 3007.25, 3007.41, 3007.51.

On the other hand, if the Commission determines, following the procedures of 39 C.F.R. §§ 3007.31-.33, that the material should be publicly disclosed, then it would be improper to maintain the materials under seal and require parties to seek access, subjecting them to the restrictions and obligations associated with requesting access to non-public information. Although these restrictions and obligations are necessary to protect truly non-public material, they unfairly burden participants and hinder the PAEA's increased transparency when the material should be public.

D. Nature and Extent of Any Likely Commercial Harm to the Postal Service

In this section, the Commission discusses the second part of the balancing test, the nature and extent of any likely commercial injury to the Postal Service from disclosure of data at issue. The Commission focuses specifically on the commercial harms asserted by the Postal Service in its Application for Non-Public Treatment and

assesses the likelihood of the alleged harms if the Inbound Letter Post data at issue were to be publicly disclosed.

1. Disclosure will not Reveal Third-Party Data

The Postal Service claims that disclosure will likely result in commercial harm for the Postal Service and at least one foreign postal operator. Postal Service Response at 6-7; see Application for Non-Public Treatment at 5-9. The Postal Service alleges that disclosure will reveal operator-specific data because “revenue from at least one particular postal operator overwhelmingly dominates its UPU country group.” Postal Service Response at 4. The Postal Service asserts that “casual observers” and “sophisticated and self-interested industry participants” alike will use the data at issue “to gauge market size and market shares within a small range of error.” *Id.* The Postal Service suggests that companies in the international mailing and shipping industry could use the data at issue to make decisions to enter into new markets or to expand their operations in existing markets, which would lead to revenue and market share losses for the Postal Service and the foreign postal operator.⁵⁸

The likelihood of disclosure resulting in the identified commercial harm is contingent upon the assumption that disclosing the data at issue will reveal at least one foreign postal operator’s data. The Court of Appeals for the District of Columbia (Court

⁵⁸ Application for Non-Public Treatment at 5-6. The data at issue does not include mailpieces exchanged under market dominant negotiated service agreements (NSAs). CHIR No. 15 at 2 (specifically states that the Postal Service should not include mailpieces exchanged under a NSA in its response). A “negotiated service agreement” is “a contract negotiated between the Postal Service and another entity . . . for service and rates different from those of general applicability.” Docket No. RM2007-1, Order Proposing Regulations to Establish a System of Ratemaking, August 15, 2007, at 58 n.36 (Order No. 26); see *also* 39 C.F.R. § 3001.5(r). The Postal Service argues, however, that participants could compare the data at issue and the data the Commission directed the Postal Service to file publicly in Order No. 4394, which did include mailpieces exchanged under NSAs, to gain even more information related to the inbound international mail volume from the foreign postal operator to the United States. Postal Service Response at 4 n.9. The Commission notes that it vacated Order No. 4394, and the Postal Service is no longer required to file that information publicly, thereby mooting the Postal Service’s concerns. Order No. 4410 at 4-5.

of Appeals) previously considered the viability of such an assumption applied to facts similar to those at issue in this Order.

In *Mudge Rose*, the data at issue included aggregated information relating to the production, sales, and revenues of 9 domestic producers and 22 importers of top-of-the-stove cookware.⁵⁹ The ITC collected and included this data in a report detailing the threat the top-of-the-stove cookware from Korea and Taiwan presented to domestic producers. *Id.* at 1529. When preparing the public version of the report, the ITC determined that “the aggregate data in dispute could be associated with or used to disclose the operations of particular firms[.]” and withheld the data.⁶⁰ Representatives of the Korean producers and exporters investigated by the ITC filed a FOIA request for the redacted data. *Id.* In denying the request, the Secretary of the ITC contended that, because of the small number of domestic companies in the industry, releasing the aggregated data “would have the effect of revealing the operations of individual firms[.]” *Id.*

The Court of Appeals noted that underlying this decision was the ITC’s “unexplained assumption that in industries dominated by one or two firms, aggregate data ‘necessarily reveals confidential business information concerning the major producer or producers.’” *Id.* (emphasis in the original). The Court of Appeals found that the ITC failed to provide reasoned justification for its assumption. *Id.* at 1531-1532. Absent such justification or explanation, the court held that there is no basis to conclude that disclosure of aggregated figures automatically exposes individual company information. *Id.* The court concluded “[e]ven assuming that it is apparent to everyone

⁵⁹ *Mudge Rose Guthrie Alexander & Ferdon v. U.S. International Trade Commission*, 846 F.2d. 1527, 1528 (D.C. Cir 1988). In *Mudge Rose*, the Court of Appeals remanded a decision by the U.S. International Trade Commission (ITC) to redact aggregated data collected from nine domestic producers of top-of-the-stove cookware. 846 F.2d. at 1532.

⁶⁰ *Id.* The ITC investigators based their determination on the following two guidelines: “3. In the case of three firms, one of which produces 75 percent of the domestic production, all business data will be deleted. 4. In the case of two firms producing 90 percent of the domestic production, all business data will be deleted.” *Id.* at 1531.

that one company accounts for a major portion of the industry production, it is unclear how a party not privy to the specific company data could discern from industry-wide totals . . . the production breakdown[.]” *Id.* at 1532.

The Postal Service argues that because one foreign postal operator dominates its UPU country group, disclosing the aggregated Inbound Letter Post data will expose operator-specific data. Postal Service Response at 4. Consistent with the Court of Appeal’s rationale in *Mudge Rose*, the Commission finds that there is no basis to conclude that disclosure of aggregated UPU country group revenue data, even when dominated by one foreign postal operator, necessarily reveals operator-specific data. The Commission finds that the UPU country groups are too broad and diverse to allow participants to infer operator-specific revenue from aggregated revenue data. The UPU has 192 members. There are 4 UPU country groups, and each group has at least 30 countries or territories.⁶¹ Even if it is apparent to everyone that one foreign postal operator generates more revenue within its country group than other operators, it does not follow that individuals could determine its share of the total revenue for that country group.⁶² Additionally, despite the Postal Service’s conclusory claims that disclosure will expose operator-specific data, the Postal Service does not identify how individuals can determine operator-specific data from the aggregated country group data.

For example, UPU country Group II consists of 34 UPU member countries and territories. Because individuals do not know the percentage of revenue generated by the 34 specific Group II foreign postal operators, there is no way to determine the

⁶¹ Decisions of the 2016 Istanbul Congress, UPU (2017) at 251-257. As discussed in section II.C, *supra*, Group I consists of 41 countries and territories, Group II consists of 34 countries and territories, Group III consists of 39 countries and territories, and Group IV consists of 105 countries and territories. *Id.*

⁶² In FY 2017, the Inbound Letter Post product did not earn sufficient revenue to cover its cost. The FY 2017 ACR reported that the Inbound Letter Post product had a negative contribution of 170 million in FY 2017. FY 2017 Annual Compliance Report, December 29, 2017, at 8. In its response to the Commission’s preliminary determination, NAM asserts that it was hard-pressed to imagine how or why competitors would use the data at issue to “out-compete” the Postal Service in the extremely un-lucrative Inbound Letter Post market. NAM Response at 2.

revenue earned by the Postal Service for the delivery of Inbound Letter Post from any one foreign postal operator. For example, the Republic of Korea (South Korea) is in Group II. Because individuals do not know the specific percentage of Inbound Letter Post revenue generated by Korea Post, the foreign postal operator for South Korea, they cannot determine the revenue generated by Inbound Letter Post originating from South Korea. Rather, all that individuals can glean from the data at issue is the total Inbound Letter Post revenue generated by all 34 countries and territories in Group II. It is impossible to know whether Korea Post generates 20 percent, 45 percent, 55 percent, or 75 percent of Group II's Inbound Letter Post revenue (or some percentage falling well above or below that range). As a result, individuals could analyze Group II's Inbound Letter Post revenue data if the data were publicly disclosed, but without knowledge regarding the specific percentage of revenue generated by specific foreign postal operators, any analysis would require assumptions and conjecture.

The Court of Appeals acknowledged that aggregated data “coupled with knowledge already publicly available about the makeup of the industry, could lead to identification of the shares of particular companies in that data.” 846 F.2d at 1531. However, as the Postal Service concedes, participants “do not know the specific percentage that this one country represents within its country group[.]” Postal Service Response at 8 (footnote omitted). At most, the Postal Service posits that participants would be able to approximate market size and market share, but recognizes that this approximation necessarily includes a margin of error. *Id.* at 4, 8.

Accordingly, the Commission finds that there is no evidence that disclosing the aggregated Inbound Letter Post revenue data will reveal operator-specific data. Because unsealing the Postal Service's Response to CHIR No. 15 will not expose operator-specific data, the Commission finds that it is unlikely that disclosure will result in the potential commercial harm identified by the Postal Service.

2. Unlikely that Disclosure will Result in the Commercial Harm Identified by the Postal Service

In its Application for Non-Public Treatment, the Postal Service identifies two commercial harms that it alleges are likely to result if its Response to CHIR No. 15 is unsealed.⁶³ The Commission discusses each harm, the hypothetical examples of each harm provided by the Postal Service, and its related analysis below.

First, the Postal Service alleges that companies in the international mailing and shipping industry could use the data at issue to “gain knowledge and insights about the relative strengths and weaknesses of the Postal Service’s business related to Inbound Letter Post mail,” which would give these companies advantages in seeking to divert business from the Postal Service and at least one foreign postal operator. Application for Non-Public Treatment at 7. The Postal Service provides four hypothetical examples of this commercial harm.⁶⁴

The Postal Service’s first two hypothetical examples are similar. In the first hypothetical example, the Postal Service claims that companies in the mailing and shipping industry could use the operator-specific data it alleges will be exposed to focus sales efforts in a particular market. Application for Non-Public Treatment at 7. The Postal Service alleges that such companies would use the data at issue to gauge the Postal Service’s market share in that specific foreign market as well as the total size of that foreign market and use the information to focus their sales efforts, harming the Postal Service and foreign postal operator at issue. *Id.* at 7. In the second hypothetical example, the Postal Service also claims that because operator-specific data would be exposed, companies in the international mailing and shipping industry would “gain a refined understanding of the revenue opportunities for products with certain shapes, in certain foreign markets.” *Id.* As a result of this understanding, the Postal Service

⁶³ Application for Non-Public Treatment at 7-9. 39 C.F.R. § 3007.21(c)(4) requires the Postal Service to identify the nature and extent of commercial harm alleged and the likelihood of the harm.

⁶⁴ 39 C.F.R. § 3007.21(c)(5) requires the Postal Service to provide at least one specific hypothetical example of each alleged commercial harm.

alleges that these companies may increase investment and marketing in certain markets, causing additional competition in those markets and the Postal Service to lose business. *Id.* at 8.

The commercial harm discussed in the first two hypothetical examples relies upon the assumption that disclosing the data at issue will reveal operator-specific data that would allow international mailing and shipping companies to focus sales, marketing, and investment decisions in specific foreign markets. As discussed in section V.D.1, *supra*, disclosing the aggregated Inbound Letter Post data at issue will not reveal operator-specific data because aggregating the data by UPU country groups masks operator-specific data. Because disclosure will not reveal operator-specific data, it is unlikely that these companies will be able to use the data at issue to determine information about specific foreign markets. Accordingly, the Commission finds that it is unlikely that disclosing the Postal Service's Response to CHIR No. 15 will result in the hypothetical examples provided by the Postal Service.

In the third hypothetical example, the Postal Service claims that the international mailing and shipping companies, including other foreign postal operators, could analyze the performance of certain shapes within the Inbound Letter Post product. *Id.* The Postal Service claims that based upon this analysis, these companies could target their marketing and sales efforts at "actual or potential customers in market segments associated with certain-shaped products where the Postal Service has substantial revenue[.]" *Id.*

Similar to the second hypothetical example, which focused on shaped-based competition in specific markets, the third hypothetical example focuses on international mailing and shipping companies targeting their marketing and sales efforts to specific customers that send certain shaped Inbound Letter Post mailpieces in markets where the Postal Service has substantial revenue. The Postal Service does not explain how disclosure of the data at issue would allow for such targeting. Before companies in the international mailing and shipping industry can target specific customers, these companies would need to identify the specific customers in specific markets to target.

Because the data at issue do not reveal operator-specific or customer-specific information, the Commission cannot fathom how such companies could use the aggregated data to determine specific customers worth targeting. Absent operator-specific data, international mailing and shipping companies could only discern revenue generated by each UPU country group by shape as a whole. Accordingly, it would require substantial guesswork to translate such aggregated data into customer-specific information. Therefore, the Commission finds that it is unlikely that disclosure will result in the hypothetical example described by the Postal Service.

In the fourth example, the Postal Service warns that the suppliers of services, such as transportation, could use the data at issue to price the cost of their services to the Postal Service's and foreign postal operators' detriment by better assessing where there are opportunities to increase prices or become resistant to price negotiations. *Id.* at 8-9. For example, the Postal Service warns that suppliers that transport Inbound Letter Post mail could assess the data to "determine approximate volume and contribution by product" for specific markets. *Id.* at 8. After identifying foreign postal operators that send large volumes of Inbound Letter Post mail, the Postal Service suggests that these suppliers could increase their prices to transport Inbound Letter Post mail from those markets. *Id.* at 8-9.

However, similar to the three prior hypotheticals, this hypothetical example is premised upon the assumption that disclosing the data at issue will reveal operator-specific data because the hypothetical example is dependent on suppliers being able to identify Inbound Letter Post volume originating from specific foreign markets. Because suppliers will not be able to discern operator-specific revenue from the data at issue, the Commission finds that it is unlikely that disclosure will result in the hypothetical example described by the Postal Service. Even if suppliers were able to identify mail flows from specific foreign postal operators to the United States, the commercial harm the Postal Service identified would affect foreign postal operators, not the Postal Service. This is because foreign postal operators, not the Postal Service, pay to transport Inbound Letter Post mail to the United States. Because the data at issue relates to inbound mail

and not outbound mail, the hypothetical example identifies a potential harm to foreign postal operators and not, as claimed in the Application for Non-Public Treatment, to the Postal Service.

The second commercial harm identified by the Postal Service is also a potential harm to foreign postal operators, not to the Postal Service. *Id.* at 9. The Postal Service provides one hypothetical example of this harm. The Postal Service claims that competitors of foreign postal operators could use operator-specific data to determine the average per-piece and per-pound revenue for Inbound Letter Post mail, which represents part of foreign postal operators' cost to send UPU Letter Post mail to the United States. *Id.* The Postal Service suggests that competitors to foreign postal operators could use this average per-piece and per-pound cost data to develop lower-cost alternatives for foreign mailers to send international mail to the United States. *Id.*

Like the other commercial harm and hypothetical examples, this commercial harm and hypothetical example relies upon the assumption that disclosing the data at issue will reveal operator-specific data. As discussed in section V.D.1, *supra*, disclosing the aggregated Inbound Letter Post data at issue will not reveal operator-specific data because aggregating the data by UPU country groups masks operator-specific data. Disclosing the data at issue will reveal neither operator-specific terminal dues nor operator-specific costs. Because the data at issue does not include operator-specific terminal dues or operator-specific costs, competitors to foreign postal operators would not be able to determine the per-piece or per-pound cost to foreign postal operators to send UPU Letter Post mail to the United States as described in the hypothetical example. Therefore, the Commission finds that it is unlikely that disclosure will result in the hypothetical example provided by the Postal Service.

In addition to these specific potential commercial harms, the Postal Service raises two additional concerns. First, the Postal Service claims that it is not aware of any business in the mailing or shipping industry that publicly discloses aggregated revenue data. *Id.* at 5. The Commission notes, however, that the Postal Service itself publicly provides aggregated revenue data, by Postal Service-defined country groups,

shape, and weight for Outbound Single-Piece First-Class Mail International, the market dominant outbound letter and flat product. See section V.C.3, *supra* and Attachment. Additionally, the Postal Service notes that no commercial enterprise would publicly disclose information pertaining to inbound market dominant products for which rates could be negotiated with other postal operators. Application for Non-Public Treatment at 1. However, the Postal Service provides detailed revenue data for domestic market dominant products for which rates could be negotiated with postal customers.

Second, the Postal Service also criticizes what it characterizes as a contradiction in the Commission's preliminary determination to unseal its Response to CHIR No.15. Postal Service Response at 8. In the preliminary determination, the Commission found that the "potential for competitors, mailers, and suppliers to analyze the aggregated data and alter their behavior to be minimal" because it was likely that such parties had already identified desirable markets and devoted their resources accordingly. Order No. 4409 at 8. The Postal Service asserts that such companies could only identify desirable markets if they had the knowledge necessary to make business decisions based on reliable, non-speculative assumptions. Postal Service Response at 8. Furthermore, the Postal Service suggests that the knowledge necessary to identify desirable markets would also help companies in the international mailing and shipping industry identify operator-specific data from the data at issue. See *id.*

The Commission acknowledges that high-level analysis on global market trends and the international mailing and shipping industry is publicly available.⁶⁵ The Commission also acknowledges that companies in the international and shipping industries likely have internal financial data and internal research and reports on the international mailing and shipping industry. However, although these sources of

⁶⁵ See UPU, Postal Economic Outlook 2018 (2018) available at http://www.upu.int/uploads/tx_sbdownloader/postalEconomicOutlook2018En.pdf; UPU, Research on Postal Markets: Trends and Drivers for International Letter Mail, Parcels, and Express Mail Services (2016) available at http://www.upu.int/uploads/tx_sbdownloader/researchOnPostalMarketsTrendsAndDriversForInternationalLetterMailParcelsAndExpressMailServicesEn.pdf.pdf.

information may be helpful to identifying more or less desirable markets, they are high level in nature and do not provide foreign postal operator specific information. The Commission is not aware of, and the Postal Service does not provide evidence of, any information that would allow companies to ascertain the percentage of Inbound Letter Post revenue generated by a specific foreign postal operator, either independently or in conjunction with disclosure of the data at issue. See Postal Service Response at 8. Therefore, the Commission finds the combination of internal market data or publicly available information with the data at issue will not expose operator-specific data. Because no operator-specific data will be revealed, the Commission finds that it is unlikely that disclosure will result in the commercial harms identified by the Postal Service.

Significantly, the Commission notes that no foreign postal operator has expressed opposition to unsealing the aggregated Inbound Letter Post data at issue.⁶⁶ Before filing its FY 2017 ACR, the Postal Service notified foreign postal operators through the UPU that, pursuant to U.S. law, it was required to file certain information about its international mail revenues to the Commission, and that foreign postal operators could “address any confidentiality concerns directly with the Postal Regulatory Commission.”⁶⁷ This notification cited 39 C.F.R. part 3007 as the regulations applicable to the treatment of material filed under seal.

This UPU notification and the specific instruction that foreign postal operators address any confidentiality concerns directly with the Commission indicates that foreign

⁶⁶ In contrast, in Docket No. R2018-1, when the U.S. Chamber of Commerce sought to unseal disaggregated Inbound Letter Post data, the Canada Post Corporation (Canada Post) wrote a letter opposing disclosure. Docket No. R2018-1, United States Postal Service Notice of Filing Third Party Comments, October 26, 2017, at 2 (Canada Post Letter). The data at issue in Docket No. R2018-1 included country-specific pricing, revenue, volume, and weight for the Inbound Letter Post product. Docket No. R2018-1, Notice of the United States Postal Service of Filing USPS–LR–R2018–1/NP1, October 6, 2017, Attachment 1 at 5. In its letter, Canada Post stated that disclosure of its operator-specific information would have a “serious and significant impact” on its commercial interests. Canada Post Letter at 2.

⁶⁷ UPU IB Circular No. 173, December 18, 2017, at 1. This notification also identified Docket No. ACR2017 as the relevant proceeding.

postal operators had adequate notice of this proceeding and were provided the information needed to participate in this proceeding. Just as the Commission would consider any letters from foreign postal operators in opposition to unsealing the data at issue, the Commission also considers the fact that no such letter has been filed when balancing the nature and extent of commercial harm identified by the Postal Service and the public interest in maintaining the financial transparency of a government establishment competing in a commercial market.

E. Determination to Unseal is Consistent with Commission Precedent

The Postal Service argues that the Commission's preliminary determination to unseal its Response to CHIR No. 15 constitutes an arbitrary and capricious departure from past Commission practice. Postal Service Response at 9. The Postal Service then identifies three instances where it alleges the preliminary determination conflicts with past Commission and Postal Rate Commission treatment of inbound international mail data.

First, the Postal Service notes that Order No. 4409 acknowledges that the Commission has treated disaggregated Inbound Letter Post revenue data as non-public because disclosure of operator-specific revenue data may result in commercial harm to foreign postal operators. *Id.* at 9-10. It argues that disclosing the data at issue conflicts with Commission treatment of operator-specific data because disclosure will expose operator-specific data. *Id.* However, as discussed above, the Commission finds disclosing aggregated Inbound Letter Post revenue data by country group and by shape does not reveal operator-specific revenue data. Accordingly, unsealing the Postal Service's Response to CHIR No. 15 is consistent with the practice of applying non-public protection to operator-specific data.

Second, the Postal Service contends that the preliminary determination to unseal the data at issue is inconsistent with Commission treatment of ICRA data in recent

annual compliance review proceedings.⁶⁸ Specifically, the Postal Service claims that by filing its corrections to the ICRA under seal, the Commission accepted the Postal Service's rationale for non-public treatment. *See id.*

The Postal Service's argument misconstrues 39 C.F.R. part 3007. The Commission has not "accepted" any rationale for non-public treatment "unless the Commission makes a determination of non-public status (for Postal Service submissions) under rule 3007.32, or in response to a motion for early termination of non-public status (for any submissions) under rule 3007.31." Order No. 322 at 9. Because the Commission did not make a determination of non-public status of the ICRA data under section 3007.32 or in response to a motion for early termination of non-public status under section 3007.31, the Commission has not accepted any of the Postal Service's rationales for non-public treatment of the ICRA data.⁶⁹ Accordingly, unsealing the data at issue is consistent with the Commission's treatment of ICRA data in Docket Nos. ACR2015 and ACR2016.

Third, the Postal Service contends that Order No. 4409 departs from longstanding Postal Rate Commission treatment of similar international mail data.⁷⁰ The Postal Service fails to acknowledge that the Postal Rate Commission operated under a different statutory and regulatory scheme than the Commission. As discussed above, the PAEA provided for increased transparency and accountability and enhanced

⁶⁸ *Id.* at 10. The ICRA aggregates inbound international mail data by target system and transition system countries. Countries in Groups I, II, and III are in the target system and countries in Group IV are in the transition system.

⁶⁹ Because the Commission did not make a determination of non-public status of the ICRA data, it filed a non-public annex with its corrections to the Postal Service's ICRA data under seal, which is consistent with 39 C.F.R. § 3007.23.

⁷⁰ Postal Service Response at 11. Specifically, the Postal Service notes that, in Docket No. IM99-1, the Postal Rate Commission denied UPS's request for access to international cost, volume, and revenue data. *Id.* However, the Commission notes that the Postal Rate Commission did not deny UPS's request for access based on the nature of the information to which it requested access. *See* Docket No. IM99-1, Order Denying United Parcel Service Motion to Provide Public Access to International Mail Data, May 21, 1999, at 3-4 (Order No. 1245). Instead, the Postal Rate Commission denied the request because the motion requested that the "Commission fashion an ad hoc disclosure policy with respect to data elicited under § 3663," which the Postal Rate Commission declined to do. Order No. 1245 at 4.

the authority and responsibilities of the Commission. Significantly, as part of its mission to increase transparency, the PAEA grants the Commission authority to disclose materials identified as non-public by the Postal Service. 39 U.S.C. § 504(g)(3).

Additionally, the PAEA requires the Postal Service and the Commission to file annual reports related to the compliance of the Postal Service's products. 39 U.S.C. §§ 3652, 3653. The Senate report noted that the annual reporting requirements would ensure that Congress, the Commission, and all interested participants would have sufficient information to evaluate the compliance. S. Rep. No. 108-318 at 19-20. The PAEA also requires the Commission to provide an opportunity for postal stakeholders to comment on the Postal Service's ACR. 39 U.S.C. § 3653(a). Accordingly, an essential function of the annual reporting requirements is to inform the public and to invite comments on whether the Postal Service is complying with the applicable statutory and regulatory provisions.

In contrast, in Order No. 1245, the Postal Rate Commission observed that UPS requested access to data in the context of the requirement that the Postal Rate Commission submit a report on international mail to Congress.⁷¹ The Postal Rate Commission noted that “[i]n this context, [it] is not functioning in its usual role as a quasi-judicial body applying the record hearing procedures of the [Administrative Procedure Act (APA)].” Order No. 1245 at 4. This meant that Congress did not impose the public participation procedures of the APA (public hearing, discovery, or cross-examination) on the international mail reporting process. *Id.* In contrast to the annual reporting requirements under the PAEA, it was not an essential function of the international mail report to inform the public or to invite public comment.

⁷¹ Order No. 1245 at 3-4; see Division A—Omnibus Consolidated Appropriations, Pub. L. 105-277, § 101(h), 112 Stat. 2681, 527 (1998) (codified in former 39 U.S.C. § 3663).

VI. CONCLUSION

For the above reasons, the Commission affirms its preliminary determination to unseal the aggregated Inbound Letter Post revenue data filed in the Postal Service's Response to CHIR No. 15. The Commission finds that the Postal Service did not meet its burden of persuasion to show that the data at issue should be withheld from the public. Moreover, the public interest in maintaining the financial transparency of the Postal Service, a government establishment operating in commercial markets, outweighs the nature and extent of any likely commercial harm that may result from public disclosure of the aggregated Inbound Letter Post revenue data provided in the Postal Service's Response to CHIR No. 15.

Specifically, the Commission finds that there is substantial public interest in maintaining the financial transparency of the Postal Service. After considering previous filings that expressed concern regarding the lack of transparency surrounding Inbound Letter Post, a market dominant product, and considering the type of revenue data the Postal Service files publicly for other market dominant products, the Commission finds that disclosure of the aggregated Inbound Letter Post revenue data will further the public interest in maintaining the financial transparency of the Postal Service. Additionally, after considering the commercial harms identified by the Postal Service in its Application for Non-Public Treatment and the additional rationale provided by the Postal Service, the Commission finds that it is unlikely that disclosing the data at issue will result in the commercial harms identified by the Postal Service.

The Postal Service shall re-file its Response to CHIR No. 15 in a public library reference no later than April 2, 2018.

It is ordered:

1. The Postal Service's response to Chairman's Information Request No.15 should be unsealed.

2. The Postal Service shall re-file its response to Chairman's Information Request No. 15 and related materials in a public library reference no later than April 2, 2018.

By the Commission.

Stacy Ruble
Secretary

Attachment

Outbound Single-Piece First-Class Mail International (FCMI)
FY 2017 Calculated Revenue

FCMI CARDS*										
OZ.	GROUP 1	GROUP 2	GROUP 3	GROUP 4	GROUP 5	GROUP 6	GROUP 7	GROUP 8	GROUP 9	TOTAL
1	1,757,454	9,273,226	-	-	-	-	-	-	-	11,030,681

FCMI LETTERS										
OZ.	GROUP 1	GROUP 2	GROUP 3	GROUP 4	GROUP 5	GROUP 6	GROUP 7	GROUP 8	GROUP 9	TOTAL
1	55,759,059	2,685,621	10,287,090	5,270,230	39,756,334	7,729,645	1,663,336	719,630	9,100,267	132,971,211
2	2,071,943	295,669	1,727,517	680,543	6,125,717	1,193,789	273,442	145,567	1,339,697	13,853,884
3	608,593	51,855	298,078	119,405	1,049,382	182,386	37,319	17,659	228,097	2,592,774
3.5	206,886	9,110	46,338	26,982	155,119	29,275	10,315	2,616	30,060	516,700
TOTAL	58,646,481	3,042,254	12,359,022	6,097,160	47,086,552	9,135,096	1,984,412	885,472	10,698,121	149,934,569

FCMI FLATS										
OZ.	GROUP 1	GROUP 2	GROUP 3	GROUP 4	GROUP 5	GROUP 6	GROUP 7	GROUP 8	GROUP 9	TOTAL
1	974,908	47,865	429,420	103,181	1,141,278	229,349	26,961	32,445	283,114	3,268,520
2	2,799,984	189,901	1,688,336	358,997	3,558,230	959,402	103,491	115,526	1,225,008	10,998,875
3	2,971,774	202,461	1,347,084	351,521	3,028,435	835,700	122,883	103,135	774,884	9,737,878
4	2,078,049	166,783	1,162,612	314,195	2,758,251	766,200	115,597	90,294	645,916	8,097,898
5	1,365,276	86,905	920,451	185,158	1,905,206	532,758	90,847	51,690	415,646	5,553,936
6	1,209,528	104,967	835,040	148,955	1,578,234	388,069	61,689	74,919	409,160	4,810,561
7	809,960	47,395	635,014	116,188	1,208,812	388,594	44,029	53,711	431,068	3,734,772
8	837,328	27,039	488,446	107,453	1,016,871	271,431	30,508	44,695	216,742	3,040,514
12	1,806,773	102,066	1,457,242	249,934	2,563,631	637,093	92,107	123,632	831,735	7,864,214
16	958,780	38,625	972,176	126,973	1,163,557	275,322	28,943	69,482	335,213	3,969,071
20	314,731	9,688	364,430	44,030	524,152	100,002	12,094	7,267	119,517	1,495,913
24	214,595	62,140	198,590	17,606	229,105	49,595	12,340	4,674	55,628	844,272
28	102,787	18,104	73,760	10,543	151,513	27,006	4,286	966	35,736	424,702
32	50,256	5,548	29,603	8,006	75,395	21,622	2,143	503	29,816	222,891
36	44,168	524	15,050	7,643	48,348	11,166	1,377	17,904	24,760	170,940
40	15,207	311	5,163	8,340	63,407	13,265	487	387	1,718	108,285
44	15,058	259	18,677	1,730	12,672	1,625	405	343	1,041	51,812
48	7,231	268	2,920	1,349	28,141	18,870	361	325	1,631	61,095
52	1,225	86	11,002	1,986	12,382	4,396	217	139	573	32,007
56	5,447	190	18,472	9,200	14,919	6,530	375	302	1,257	56,691
60	1,028	264	2,867	3,302	14,030	3,454	355	294	1,621	27,215
64	6,072	293	3,709	2,299	7,220	35,277	437	450	2,863	58,619
TOTAL	16,590,162	1,111,685	10,680,067	2,178,588	21,103,789	5,576,729	751,931	793,081	5,844,649	64,630,682

Source: Library Reference USPS-FY17-41, December 29, 2017, Excel file "USPS.FY17.41 MKT_DOMINANT_INTL_BD.xlsx," tab "FCMI CALCULATED REVENUE," rows 5-44.

* The Postal Service reports revenue for FCMI Cards for Group 1 and Group 2. In this instance, Group 1 represents Canada, while Group 2 includes all other countries to which the Postal Service sends FCMI Cards.